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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,115	07/18/2003	Michel John Arthur Groux	88265-6859	1635
29157	7590	02/23/2006		
BELL, BOYD & LLOYD LLC				EXAMINER
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CHICAGO, IL 60690-1135				ART UNIT
				PAPER NUMBER
				1761

DATE MAILED: 02/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/622,115	GROUX ET AL.
	Examiner Adepeju Pearse	Art Unit 1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. ____ .
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date ____ .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: ____ .

## DETAILED ACTION

### *Specification*

*and page 4, line 7*

1. The use of the trademark "Avicel" on page 2 line 36 has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner, which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. *Claims 1, 2, 5-10 & 14 are*  
Claims 1, 2, 5-10 & 14 are rejected under 35 U.S.C. 102(b) as being anticipated by Jonas (U.S. Pat. No. 4,012,533). With regard to claims 1 and 8, Jonas discloses a milk product comprising 0-15% fat, 3-10% protein, which includes non-fat dry milk (col 5 lines 17-25, col 5 lines 59-61), at least two emulsifiers (col 6 lines 30-33), a stabilizer and water. The ranges disclosed are within applicant's recited range. Jonas further discloses that the milk product does not exhibit syneresis or foam breakdown upon holding at room temperature for as long as 6 to 8 hours and exhibits the physical and organoleptic properties of whipped topping (col 2 lines 60-65). It is well known in the art that whipped topping is white foam.

3. With regard to claim 2, Jonas discloses emulsifiers including propylene glycol monostearate, mono and diglycerides, etc (col 4 lines 22-34). Suitable stabilizers include alginates, carboxymethylcellulose, etc (col 5 lines 2-6). Sodium alginate is utilized in a whipped dessert as a stabilizer (col 9 lines 45-46).

4. With regard to claim 5, <sup>6</sup> Jonas discloses suitable emulsifiers including propylene glycol monostearate (col 4 lines 22-34) that can be utilized at a range of 0.3 to 0.7% ((col 3 lines 40-45). This range is within applicant's recited range.

5. With regard to claim 10, Jonas discloses non-dairy fat such as vegetable oils including soybean oil, palm oil, etc (col 4 lines 1-5).

6. With regard to claim 11, Jonas discloses additional ingredients in the milk product including flavorings, coloring agents, etc (col 7 lines 36-38).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claims 3-4, 6-7, 9 and 12-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jonas (U.S. Pat. No. 4,012,533) in view of Gonsalves et al (U.S. Pat. No. 6,033,711), Thompson (U.S. Pat. No. 3,230,091) and Lynch (U.S. pat. No. 5,759,609). With regard to claim 3, Jonas failed to disclose foam stabilizers comprising a mixture of microcrystalline cellulose and carboxymethylcellulose. However, Gonsalves et al teach a whipped product comprising 0.1 to 0.5% of gum stabilizers including microcrystalline cellulose and carboxymethylcellulose, alginates and mixtures thereof in order to provide structure to the foam (col 3 lines 8-15). The range is within applicant's recited range and it would have been obvious to one of ordinary skill in the art to utilize these ingredients as stabilizers in order to provide structure to the foam of the milk product.

11. With regard to claim 4, Jonas failed to disclose a wt% for sodium alginate. However, Gonsalves et al teach that alginates are suitable stabilizers as recited above. It would be obvious to one of ordinary skill in the art to expect that sodium alginate would be an effective stabilizer because it is an alginate.

12. With regard to claim 6, Jonas failed to disclose sorbitan tristearate as an emulsifier in a milk product. However, Gonsalves et al teach preferred emulsifiers including sorbitan tristearate at a range from 0.03 to 0.19% (col 2 lines 52-53) in a milk product such as whipped topping. It would have been obvious to one of ordinary skill in the art to modify Jonas with Gonsalves by utilizing sorbitan tristearate as an emulsifier in order to provide a stable product.

13. With regard to claim 7, Jonas failed to disclose a wt% range for unsaturated monoglyceride. However, Gonsalves et al teach an emulsifier level of 0.1 to 0.5%. The emulsifying agents include monoglycerides of fatty acids (col 2 lines 38-41). This range is within applicant's recited range. It would be obvious to one of ordinary skill in the art to modify Jonas with Gonsalves et al by utilizing this emulsifier in order to provide a stable milk product.

14. With regard to claim 9, Jonas discloses a milk product comprising 14-32% fat (col 6 line 53) and sodium alginate (col 9 line 46). However, Jonas failed to disclose 2.4% to 3% propylene glycol monostearate and 0.1% to 0.15% unsaturated monoglycerides. Gonsalves et al teach an emulsifier level of 0.1 to 0.5%. The emulsifying agents include monoglycerides of fatty acids (col 2 lines 38-41). This range is within applicant's recited range. Lynch teaches a milk product comprising emulsifiers at a range from 0.05% to 5% (col 4 lines 64-67). Suitable emulsifiers include propylene glycol monostearate (col 5 lines 12-13). This range encompasses applicant's recited range. It would have been obvious to one of ordinary skill in the art to modify Jonas with Gonsalves et al and Lynch by incorporating these emulsifiers in order to provide a stable milk product.

15. With regard to claims 12 and 14, Jonas discloses a method of forming a milk product comprising forming an emulsion containing sodium alginate as in claim 14, skim milk,

carboxymethylcellulose, adding cream cheese in water (col 11 lines 27-45). However, Jonas did not show adding sorbitan tristearate. Gonsalves et al teach suitable emulsifiers including sorbitan tristearate that can be utilized in a milk product. It would have been obvious to one of ordinary skill in the art to substitute any of the disclosed emulsifiers in Jonas or Gonsalves et al to achieve a stable milk product as instantly claimed.

16. With regard to claim 13, Jonas discloses a pasteurizing step in making the milk product (col 11 line 40).

17. With regard to claims 15-17, Jonas discloses that the milk product does not exhibit syneresis or foam breakdown upon holding at room temperature for as long as 6 to 8 hours and exhibits the physical and organoleptic properties of whipped topping (col 2 lines 60-65). However, Jonas failed to disclose utilizing a foaming device. Thompson teaches milk products dispensed using aerosol cans in order to form smooth, shiny, foamy, etc milk products when dispensed (col 1 lines 43-45, col 2 lines 48-50). It is well known in the art to utilize aerosol cans to dispense milk products to form foams and it would have been obvious to one of ordinary skill in the art to utilize the foaming device taught by Thompson to dispense a foamy milk product.

### *Conclusion*

18. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art discloses similar subject matter.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adepeju Pearse whose telephone number is 571-272-8560. The examiner can normally be reached on Monday through Friday, 8.00am - 4.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
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